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Supreme Court of the United States

No. 675 October Term, 1958.

IRVING D. FRIEDMAN,

Appellant,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

PETITION FOR REHEARING.

Irving D. Friedman,
Appellant, *Pro Se*,
1501 Broadway,
New York 36, N. Y.

Sol. Friedman,
1120 New York Avenue, N.W.,
Washington 5, D. C.

Supreme Court of the United States

No. 675 October Term, 1958.

Irving D. Friedman,

Appellant,

against

United States of America and Interstate Commerce Commission,

Appellees.

PETITION FOR REHEARING.

Appellant files this petition, pursuant to Rule 58(1), for a rehearing of the judgment of affirmance, dated March 30, 1959, because appellant believes it is an erroneous judgment.

The judgment of this Court is erroneous because, after appellant's arguments are denied, and the judgment of affirmance is added to the record, there still remains no factual, rational, or legal basis on which a Commission or Court can find that the prices to be paid to appellant are just and reasonable.

Appellant's primary argument was: when the Illinois Central signed 350 year leases and guarantees of dividends in 1925 with the Alabama and the Vicksburg companies, the Illinois Central became liable for the full amount of such rentals and guaranteed dividends for the duration of the leases. By its judgment of affirmance, this Court necessarily rejected this argument and came to the conclusion that the landlord and tenant corporations, by agreeing to merge with each other, had the power to, and did, dissolve the leases between them.

Therefore, when this Court allowed the leases to be dissolved, it left appellant in the status of a stockholder of the Alabama and the Vicksburg companies, with no leases and no guaranteed dividends, which is that of an ordinary common stockholder. As an ordinary common stockholder, dissenting from a merger, appellant is entitled to have his stock valued by the Interstate Commerce Commission on the basis of the earning power of his stock. There is nothing in the record to show what the factual or legal basis is for this court's conclusion, which is implicit in its judgment of affirmance, that the prices of $155 and $126.50 for appellant's shares are just and reasonable. These prices are based only on the capitalized value of the rental. *The Commission never valued the Alabama and the Vicksburg companies.*

This is the first time a railroad merger has been approved with no evidence of the value of the railroads.

Appellant is not asking this Court to disagree with the Commission on the question of the earning power of railroads. Nor is appellant asking this Court to disagree with the Commission on the question of values of railroads. Appellant recognizes that the Commission is the final authority on matters of valuation.

What the appellant is asking this Court to do, is to modify its judgment of affirmance to the extent of directing the Commission to find out what the earning power of appellant's railroads is, and to fix a valuation based on such earning power. Appellant will accept such values. As a stockholder in publicly owned railroads, appellant is entitled to the expert advice of the Commission on the valuation of his railroads.

As the record now stands, this Court's judgment of affirmance is an erroneous one, because there is no factual,

rational or legal basis for the valuation of appellant's securities as railroad common stocks.

April 17, 1959.

Respectfully submitted,

IRVING D. FRIEDMAN,
Appellant, *Pro Se*,
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New York 36, N. Y.

SOL FRIEDMAN,
1420 New York Avenue, N.W.
Washington 5, D. C.

Certificate of Counsel.

I am the appellant, and a member of the Bar of this Court. I certify that the foregoing petition for rehearing is presented in good faith and not for delay.

April 17, 1959.

IRVING D. FRIEDMAN.